13 Sámi rights in the sustainable transition—concluding remarks

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1. Introduction: connecting Sámi territorial rights, sustainable development and SDGs

This chapter brings some of the topics addressed within the chapters of the book to the forefront, topics that have united across the texts. Before embarking on that voyage, it is necessary to sketch a context to the connections between Sámi territorial rights, sustainable development and the Sustainable Development Goals (SDGs).

Ancestral lands are fundamental for Indigenous peoples—any threat to their ancestral lands is a threat to their way of life. Thus, the protection of their territories is of utmost importance to Indigenous peoples. Within this vein, Indigenous peoples have unique and sacred relationships with their lands, territories and resources, and these relationships are essential to Indigenous peoples’ survival, identities and well-being.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) recognises the importance of land for Indigenous peoples and affirms their right to own, use, develop and control their lands and resources. The UNDRIP includes the rights to maintain and strengthen their spiritual, cultural and economic ties to their lands, as well as to participate in decision-making processes that affect their lands and resources. Indigenous peoples’ connections to land are based on their deep understandings of the natural world and the interdependence between humans and the environment. Any infringement on Indigenous peoples’ land rights is a violation of their human rights and undermines their ability to maintain their cultural identity and ways of life.

The International Labour Organization (ILO) Convention No. 169, which Norway has ratified but Sweden and Finland still have not, also stresses the importance of recognition and protection of rights pertaining to traditional territories. The UNDRIP and ILO Convention No. 169 are the most comprehensive human rights instruments relevant for illuminating the fundamental importance of recognising rights to land and waters for Indigenous peoples, including for the Sámi in Scandinavia (Norway, Sweden and Finland). In this concluding chapter, the concept of ‘territorial rights’ is applied as an umbrella term for Sámi traditional activities—such as reindeer herding, hunting and fishing—that take place on Sámi ancestral
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lands. These continued Sámi traditional activities, are also protected as cultural rights under article 27, the International Covenant on Civil and Political Rights (ICCPR), since ‘culture manifests itself in many forms, including a particular way of life associated with the use of land resources’, and is especially true with respect to Indigenous peoples.

Due to multiple pressures over the last century, Sámi access to reindeer-grazing areas has diminished; industrialisation, infrastructure development and climate change are the primary factors behind this phenomenon. Warmer winters have led to an increase in snow and ice formation, making it challenging for reindeer to find food, and building of roads, mines, and wind farms has also fragmented the natural habitat, making it difficult for the animals to move and find new grazing grounds. Combined, these factors have severely impacted traditional Sámi reindeer herding ways of life and are threatening the cultural identity of the Sámi people.

A recent study mapping cumulative pressures and climate changes in northern Norway, Sweden and Finland concluded that 60% of the lands designated for reindeer grazing were affected by multiple land use pressures; even more concerning is that only 15% of this vast area remains undisturbed from competing human land uses. The pressures included in the analysis were intensive forestry, land-based industrial facilities (e.g. wind power, mines), road and railway networks (including other types of human infrastructure), outdoor tourism, predator presence and temperature change. These infrastructures and other types of pressures are fragmenting the landscape, making it more difficult to access available grazing areas. Herders are, as a result, increasingly forced to use trucks to move reindeer between pastures, causing, in turn, changes to their traditional practices. Due to multiple pressures and decreasing grazing lands, the adaptation capacity and flexibility of options for the reindeer herders are seriously diminished.

Thus, the cumulative effects of existing and planned industries and other competing land and water uses are real and pressing; land use conflicts are by no means declining. Moreover, conflicts over land in northern Scandinavia are expected to increase due to the ongoing sustainability transition for combating climate change (commonly referred to as ‘green transition’), which will intensify the cumulative pressures and further reduce grazing lands; new ‘green’ projects require lands for their industries and infrastructure. This sustainability transition is increasingly referred to as ‘green colonialism’ by Indigenous politicians and individuals. The notion of green transition instead reinforces existing power imbalances and may further result in the displacement and marginalisation of Indigenous communities that have been sustainably managing their lands and resources for generations.

The diminishing lands for reindeer herding in northern Scandinavia have significant implications for sustainable development. Following the Brundtland report, sustainable development aims to meet the needs of the present without compromising the ability of future generations to meet their own needs. The reindeer herding livelihood, including hunting and fishing, has been an integral part of the Sámi culture and heritage for centuries. Not only does the loss of grazing lands affect the livelihoods of the Sámi people, but it also poses a threat to the sustainability of the entire region’s ecosystem. For example, reindeer herding is often seen as a means
to preserving the mountain landscape in accordance with national environmental objectives of Sweden and Norway, and free-ranging grazing may counteract climate-driven changes on vegetation.\textsuperscript{13} The Sámi people have developed unique knowledge and practices for the management of the natural resources and ecosystems that are critical for the sustainability of the region. Therefore, it is essential to recognise the role of Sámi communities in sustainable development and the management of natural resources and biodiversity, as well as to support their efforts to maintain their traditional livelihoods and culture.

The 17 Sustainable Development Goals (SDGs), established by the United Nations in 2015 to address global challenges, not the least to eradicate poverty, are interconnected and aim to balance economic, social and environmental sustainability while ensuring that human rights are respected, protected and fulfilled. The SDGs connect sustainability issues with human rights objectives, which is of the utmost importance for Indigenous peoples and not least because they face specific social, economic and environmental vulnerabilities and unique challenges related to cultural preservation and the recognition of territorial rights.\textsuperscript{14} The individual SDGs recognise the importance of Indigenous knowledge, rights and participation in decision-making processes,\textsuperscript{15} but there are critiques about how they have been implemented and given effect so far.\textsuperscript{16} Indigenous peoples have a wealth of knowledge and practices that can contribute to sustainable development, including traditional ecological knowledge, and their involvement is crucial for the effective implementation of the SDGs.

This takes us to the aim of this concluding chapter; based on the different contributions within this book, this last chapter addresses topics that have united across the texts and highlights the progress and challenges faced in the Scandinavian states to secure the rights of the Indigenous Sámi people in a broader sustainability context. This exercise is done through illuminating three themes that ‘stood out’ in the chapters: (1) the increased significance of human rights law, (2) competing land and water uses within Sámi territories, and (3) Sámi invisibility within the larger society. The following text unfolds accordingly and lastly provides both a brief conclusion and discussion.

2. **Increased significance of human rights law**

This section highlights the increased significance of international and domestic human rights in Norway, Sweden and Finland in dealings with Sámi territorial rights. Several authors have addressed and commented on this potential shift emerging in domestic case law and in relation to mapping of rights in Finnmark, Norway. This has great importance for solving cases mindful of Sámi as an Indigenous people and may tip the scales in the favour of the Sámi party, as well as in issues concerning competing interest with ‘green’ industries. One part of this alleged shift is that domestic courts, to a larger extent than before, interpret and apply constitutional provisions and international human rights law. This is shortly addressed in subsection 2.2. The Swedish *Girjas* case in 2020, in which the Supreme Court stated that certain parts of the ILO Convention No. 169 were binding despite Sweden not being party to the Convention, has caused discussion.
2.1 Interplay between international, foreign and state laws

Several of the authors of chapters in this book highlight the increasing role of international legal norms in solving domestic cases concerning Sámi territorial rights. With respect to the assessment of potential collective property rights in Finmark, Norway, Ravna expresses that the result of the Finnmark Commission’s report on the Karasjok field study, released in 2019 and through which the Commission, for the first time, found that collective ownership existed, was due to the Commission taking a different approach to legal history and international law and not differences in factual circumstances of the Karasjok area. In said report, the Commission refers to both ILO Convention No. 169 and the UNDRIP in support of its findings. Ravna states that this change in interpretation of circumstances is necessary to meet Norway’s obligations under international law. Of particular interest is that the Commission for the first time applies the restorative function (right to restitution) in the ILO Convention No. 169 Article 14 (1), which the Land Tribunal for Finnmark also does in its hearing of the case.

Evident from Ravna’s chapter, the Karasjok report was unique. According to the Commission, the inhabitants of the Karasjok municipality, with a Sámi majority, owned the former state land; this decision was appealed, and in spring 2023 the Land Tribunal for Finnmark released its verdict—the majority of the Tribunal (three of the five judges) held that the registered inhabitants of Karasjok hold collective property rights to the area. The decision is appealed to the Norwegian Supreme Court.

The landmark case Fosen concerns the interpretation of Article 27 of the ICCPR. The Norwegian Supreme Court, in this case and for the first time ever, held that there was a violation of ICCPR Article 27; the wind energy project in question was found to be in violation of the cultural rights of two Sámi reindeer herding communities within the affected southern reindeer herding area. In her chapter analysing the Fosen case and in terms of Sámi rights in the ‘green transition’, Cambou puts forward that the Fosen decision features unique elements in its interpretation of Article 27. Cambou discusses that the Fosen decision suggests an interpretation of a threshold for violation in less demanding terms than what has been ascertained by the HRC. She also explains that the Norwegian Court has, in Fosen, declared that activities interfering with reindeer herding in the area examined must be assessed together with previous and planned measures, thus including cumulative effects in the overall assessment of a possible violation, while it also declared clearly that ICCPR Article 27 does not allow for proportionality assessments that balance the majority population’s needs as superior to minority interests. In relation to addressing mitigation measures, Cambou points to the significance of the fact that the court held that winter feeding in fences could not compensate for the harm from the wind farms because such a measure deviates significantly from traditional reindeer herding practices and thus would not prevent a violation of Article 27. The court’s interpretation, she emphasises, amounts to a protection against measures that would force Sámi reindeer herders to adopt an economic model that would alter their subsistence activities.
In addition, Cambou highlights the Norwegian Supreme Court’s position in *Fosen* that the right to culture is a substantive right and thus must be protected at its core—consultation procedures conducted by the state and companies with the affected Sámi and the Sámi Parliament of Norway, however inclusive and effective, do not, according to the court, legitimise substantive harms done within Sámi territories. As a landmark case applying international human rights law in Norway and within the context of ‘green energy’ developments, *Fosen* is, indeed, important. An obvious outcome of the *Fosen* case is also that it will influence future decisions in Norwegian courts concerning interpretation of ICCPR Article 27, and my understanding is that *Fosen* most likely will, as well, have some influence on the application of the Article 27 in Finland and Sweden; this development is particularly important when assessing the threshold for violations under the ICCPR Article 27 as now clearly includes cumulative effects into the equation.

The *Girjas* case (NJA 2020 s. 3), decided in early 2020 by the Swedish Supreme Court, generously refers to international human rights instruments in its decision, such as the ILO Convention No. 169, ICCPR and UNDRIP. Torp discusses the *Girjas* case in his chapter, and in contrast to the other authors commenting on international law on Indigenous rights, he, on the one hand, seems to argue that this decision poses a challenge to the supremacy of the Swedish legal order, rather than viewing it as necessary progress to support the recognition of Sámi territorial rights (see the next subsection for more on this). On the other hand, the current Swedish situation, he argues, is a consequence of the lack of political action to recognise Sámi rights, which, as a result, transforms political questions into litigations. Therefore, he continues, durable solutions from the political system are needed.

In relation to recent Finnish case law, both Heinämäki and Scheinin stress the importance of applying international human rights law to Sámi cases. Heinämäki, in her chapter, assesses the legal norm ‘the prohibition on weakening Sámi culture’ in Finnish sector legislation (the mining, environmental protection and water acts). This norm means a prohibition against causing significant harm, arising from the constitutional status of Finnish Sámi. She argues that since environmental sustainability and sustainability of the Sámi culture go hand in hand, Finnish sector legislation, aiming at safeguarding sustainability, includes a prohibition to weaken Sámi culture. Heinämäki highlights the importance of Finland’s Supreme Administrative Court decision (KHO 2020:124) from 2020, a case concerning gold panning. In this case, Finland’s Supreme Administrative Court held that constitutional provisions protecting Sámi rights, along with the obligations under the ICCPR, must be interpreted holistically when considering any effects on reindeer pasture relating to the planned gold-panning activities (and not only limited to general effects of noise pollutions and such).

For the first time, Heinämäki states, the court endorsed using cumulative impact assessment to evaluate other activities in the area, taken into consideration together, which is in line with Article 27 of the ICCPR. Even though the permit in question was not overruled, Heinämäki explains, this case is an important step forward, because the court did interpret the national provision in the light of both the Finnish constitutional and international human rights of the Sámi people.
In his chapter, Scheinin discusses three Finnish cases from 2022 concerning Sámi fishing rights.\textsuperscript{38} What is especially interesting here is that these cases came about as an act of civil disobedience by Sámi individuals to ‘stress test’ the legal system, and the Sámi defendants were all acquitted of the criminal charges. In all three cases, the Finnish courts refer to both constitutional provisions and international human rights obligations of Finland, in addition to acknowledging the importance of fishing as a part of Sámi culture. Two of the cases were decided by the Finnish Supreme Court and one by the District Court. Within this, Scheinin refers to the \textit{Veahćajohka} case (KKO 2022:26) as a particularly remarkable case, whereby the Supreme Court, as a result of judicial review, actually set aside a provision of a Finnish act because it contradicted the Constitution of Finland.\textsuperscript{39} Scheinin concludes that these three cases display the important relationship between ecological sustainability and cultural sustainability, along with a promise of a legal transition (setting aside acts of Parliament).\textsuperscript{40}

Equally interesting is that Scheinin, in his chapter, reveals influence in these cases in Finland from Canadian case law, thus also exhibiting foreign law as a source of legal inspiration in domestic cases.\textsuperscript{41} Thus, in his analysis, legal influences in these three decisions come from three directions.\textsuperscript{42} \textit{First}, as an inspiration from Sámi individuals who fished while knowingly contravening state-imposed restrictions, many of the cases from the Supreme Court of Canada concern criminal law cases regarding fishing and have substantially advanced Indigenous rights in Canada.\textsuperscript{43} \textit{Second}, Scheinin himself had submitted an expert witness opinion in two of the three cases, to the District Court in 2018, wherein he referred to a few Canadian Supreme Court criminal cases against members of First Nations who were prosecuted for unlawful fishing.\textsuperscript{44} \textit{Third}, experiences from Indigenous communities in Canada and Canadian cases have been important for the development of international law through ICCPR Article 27 and the Human Rights Committee (e.g. \textit{Ominayak/Lubicon} and \textit{Mahuika} cases).\textsuperscript{45} Scheinin argues that this has all amounted to a paradigm shift concerning the understanding of the right of peoples to self-determination; the Human Rights Committee has acknowledged the importance of ICCPR Article 1 in interpreting other provisions of the Covenant, reading into (ICCPR) Articles 25 and 27 a right to ‘internal self-determination’ for Indigenous peoples.\textsuperscript{46}

This interplay with foreign (other states’) law in Scandinavian states is especially significant due to the fact that the legal status of the Sámi people differs between the three Scandinavian states despite being one people. It is thus deducible and highly recommended that courts keep up with the case law and legal developments in neighbouring countries, even if case law and precedents are not formally binding. One example of such an inspiration can be seen in the \textit{Nordmaling} case (NJA 2011 s 109),\textsuperscript{47} whereby the Swedish Court of Appeal explicitly referred to the similar \textit{Selbu} case (Rt 2002 s 769) from the Norwegian Supreme Court; the Swedish Supreme Court, in resolving the matter in 2011, however, did not do the same. It is, nonetheless, obvious in the manner that the Swedish Supreme Court reasoned the case that it was knowledgeable in regard to the content of the Norwegian Court’s reasoning.
Åhrén, in turn, firmly suggests in his chapter that Sámi communities must rely on international Indigenous rights in finding their way in the state legal systems; he argues that domestic legislators cannot be trusted with this task. Courts in the Scandinavian states are, today, open to include international law concerning Indigenous rights, such as has been done in the Girjas and Fosen cases. Another example Åhrén provides is that of Rönnbäcken (2020), whereby the UN Committee on the Elimination of Racial Discrimination (CERD) stated that Swedish mining-related law discriminates against Sámi reindeer herding communities through promoting mining activities and, in turn, causing disproportionate harm.

Åhrén emphasises two international norms to be of key relevance in his chapter: (1) the recognition of land rights, and (2) the protection of Indigenous people’s distinctiveness, or a right to be different, flowing from the principle of non-discrimination. Both norms are also manifested in the UNDRIP. The latter norm relates to the wish of Indigenous peoples to remain distinct, and with it comes a corresponding duty of states to treat them differently, as such, so that Indigenous peoples can, in fact, preserve and develop those distinct core traits. Åhrén also recalls that, historically, international law never viewed Indigenous peoples and minorities through the same lenses, having established two branches of rights, and that minorities exist within the majority society, whereas Indigenous peoples, as peoples with recognised (internal) self-determination, exist parallel to the majority society.

In their chapter on Sámi rights and protected areas in the three Scandinavian states, Reimerson and Flodén interpret the critique against colonial discourses happening on the international arena and current responses therein as a paradigm shift. States have previously described Indigenous traditional territories as ‘wild’, ‘unused’ and ‘empty’, and Indigenous peoples as ‘primitive’ and ‘uncivilised’, which in some instances continues today. Quite recently this international shift has started to permeate Scandinavian discourses on protected areas, replacing stereotypes that top-down conservation forms with collaborative and decentralised models. This shift is another example of the influences of the international legal framework on national practices, a theme of this section.

As these authors explain, collaborative approaches have potential benefits for both environmental and social outcomes, including, for example, the recognition and protection of Indigenous rights. Nevertheless, discourses regarding protected areas still hinge upon the separation of nature and culture, causing potential conflicts with Indigenous communities’ holistic view of the natural world, such as with the Swedish Laponia World Heritage Site. Reimerson and Flodén point to the fact that, in Finland, the Akwé: Kon Guidelines have proven to be a success; these guidelines provide a voluntary mechanism for the implementation of Article 8(j) of the UN Convention on Biological Diversity (CBD). Finland became one of the first states to apply the Akwé: Kon Guidelines, in the preparation of a management and land use plan for the Hammastunturi Wilderness Area with cooperation between Metsähallitus and the Finnish Sámi Parliament, substantially improving Sámi participatory rights.


2.2 The role of national courts

How a national court tackles the case before them has immense importance for the outcome and especially so for Sámi communities that, to a larger extent, rely on international human rights for protecting their rights and culture. In his chapter, Torp brings attention to the roles of the courts and, by extension, whether national courts should have increased authority or not (‘the expansion of the province of the courts at the expense of politicians and/or administrators’, at p 73). As a way of example, Torp refers to the Girjas case (NJA 2020 s. 3), which was decided in early 2020 by the Swedish Supreme Court. This landmark case concerned the exclusive small-game hunting and fishing rights of the Girjas reindeer herding community vis-à-vis the Swedish state, addressing whether Girjas had the right to lease out these rights to third parties or not and despite an explicit prohibition to do so in an act. The Swedish Supreme Court held unanimously that Girjas, in fact, has such rights, based on protracted uses via immemorial prescription. The Girjas case is long and complex. Within this context, Torp rightfully questions if it is prudent that courts, instead of broadly based public law commissions, solve such complex matters pertaining to Sámi territorial rights. Indeed, courts only solve the issues at hand and, thus, deliver on a patchwork of cases while leaving remaining issues for another day.

On the other hand, and in line with what Åhrén suggests, while Scandinavian Sámi traditionally have relied upon states’ governments’ commissions and bills, this trust has increasingly grown thin. At least in Sweden, law proposals have not passed the Parliament, and as a result, many issues remain unresolved for decades. Controversy regarding small-game hunting and fishing in the mountain areas of Sweden was one of these unsettled issues; if the national legislator does not have the ambition to tackle an issue, who then shall solve the matter? Matters of conflict and the protection of fundamental rights that may be at stake are the task of courts, particularly supreme courts, to set a precedent for. In other words, the Sámi may not have an alternative path but to turn to the courts for an authoritative solution.

In his chapter, Torp aims to analyse the interplay between law and politics within the Girjas case; he argues that the case is an example of ‘juridification’, or ‘judicialisation’—that politics have influenced the interpretation of relevant law, which rather could be expressed as judicial activism following Torp’s argumentation. However, Torp finally concludes that the court’s reference to the ILO Convention No. 169 in the decision must be understood as based on legal interpretation, not a political position by the court concerning the Convention, and this author agrees.

The matter of the court’s potential for activism (i.e. law-making functions) must be placed into context. The Swedish Supreme Court has, for more than a decade, begun to approach some cases with what could be labelled as a ‘rights-based perspective’; Brännström refers to a few of these cases in her chapter analysing property rights of forest owners and reindeer herders. These cases have nothing to do with Indigenous Sámi rights but, rather, the protection of property rights from unlawful infringements, based on Swedish constitutional provisions and the European Convention on Human Rights. Such an approach by the Swedish Supreme Court...
Court, to rely upon both the Constitution and international human rights, is probably a game-changer in Sámi rights cases both today and in the future. Additionally, Scheinin has stressed the importance of such approaches in the three recent Sámi fishing cases in Finland (see the previous subsection).

Historically, Swedish (and Finnish) courts have had a weak position within the political and legal system—compared to Norway—but that is now changing. Some of the recent Swedish Supreme Court cases have been viewed by some as controversial and have thus spurred legal debate among Swedish lawyers as to whether the Swedish Supreme Court has overstepped its original mandate to interpret the law and not make law. In this light, the Girjas case, as well as the cases referred to by Scheinin and Heinämäki, must be understood as part of a shift towards an increased autonomy of the higher courts in Sweden and Finland, with a focus on the respect for Indigenous peoples human rights. The chapters by Cambou and Ravna attest to the immensely important steps taken in Norway, concerning competing land uses on Sámi reindeer-grazing lands from new wind farms, decided by the Supreme Court, and the recognition of collective territorial rights in Karasjok, decided by the Finnmark Commission and the Land Tribunal for Finnmark (see section 2.2). Also here a national court along with the Commission/Tribunal was responsible for the shift.

3. Competing land and water uses on Sámi territories

Section 3 engages with the seriousness of competing land and water uses on traditional Sámi territories, which several chapter authors bring to the forefront. This is accentuated by the sustainability transition that currently happens in Sápmi. Sámi communities across Scandinavia continue the battle to preserve their rights and cultures in multiple arenas and by all means available; there are increasing conflicts not only with the state, but industry proponents, local politicians and inhabitants alike. An important aspect of preserving Sámi culture and territorial rights is Sámi (ecological) knowledge, to which subsection 3.2 turns to. The Sámi traditional knowledge, transmitted from one generation onto the next, is in fact essential for cultural survival. This is also one aspect of why Sámi reindeer herding communities commonly oppose planned (‘green’) industry projects. The application of Sámi traditional knowledge is essential in assessing negative impacts of such industry developments, balancing the dominant use of Western scientific knowledge.

3.1 Historical context, protection of rights and a just sustainability transition

Sámi territorial rights are rooted in Sámi historical presence, occupation of lands and long-standing natural resource uses, something that is recognised under the ILO Convention No. 169 and the UNDRIP. It is difficult to fully comprehend Sámi rights today without this context or contemporary Sámi rights claims. Historical dimensions from various angles are brought to light especially in the chapters by Ravna, Scheinin, Brännström, and Reimerson and Flodén. Despite general recognition of Sámi territorial rights in legislation and case law having historical roots
(particularly regarding reindeer herding rights), there is a gap between the recognition of and the protection of the rights. Protective measures based on international human rights can relate to both the protection of property and/or protecting the culture and livelihood of reindeer herding and other forms of traditional Sámi industries.

Both Brännström and Heinämäki address the above gap that is in sector legislation; Brännström does so in relation to the Swedish Forestry Act, 1979, which regulates the relationship between Sámi reindeer herding and forestry, and Heinämäki does so regarding Finnish sector legislation vis-à-vis the norm of ‘prohibition on weakening Sámi culture’. In Swedish forestry legislation (and other sector legislation, such as the Swedish Minerals Act), Sámi reindeer herding is primarily regarded as a public interest, which allows, in turn, for a balancing of opposing land uses, especially given that timber production also is regarded a public interest to consider in Sweden where forestry is carried out. This displays a regulatory framework that neglects, rather than enforces, the protection of Sámi reindeer herding rights within the context of Swedish forestry. At the same time, despite an effort to implement the legal norm of prohibition on weakening Sámi culture (and not to cause significant harm) in various environmental and natural-resource-related legislation in Finnish law, there remain deficits in the practical implementation of this norm. An essential part of this legal norm of prohibition consists of an obligation of state agencies (or in some instances a proponent) to carry out a cumulative impact assessment of a proposed project so as to assess the threshold of ‘significant harm’, posing also an obligation to consult with Sámi representatives. The implementation of the cumulative impact assessment in legal application has proven to be especially difficult.

These identified gaps in Swedish and Finnish legislation (relevant also in the context of Norwegian legislation) pose important questions for a just sustainability transition, as discussed in section 1; who shall bear the burden of sustainability and climate change measures? In other words, the existing legal framework does not offer a sufficient protection for Sámi territorial rights which might thus be sacrificed in the ‘green transition’. Sámi have expressed, along the lines of Indigenous peoples around the world, that, while a green transition is needed, such a transition cannot be based on colonial practices and needs to be just and fair, thereby extending the concept of green colonialism to the ongoing exploitation of Sámi territories.

Cambou’s chapter, analysing the Fosen case, displays an excellent example of how it is possible to strike a balance between the protection of Sámi culture, in this case in the form of the reindeer herding livelihood, and the large-scale carbon-free energy production that in fact denied the right of the small Sámi communities to enjoy their own culture in this area. The Norwegian Supreme Court indicated that the wind farm could have been proposed while choosing a less intrusive site, for the interest of the reindeer herders. Cambou comments, thus, that Fosen offers a valuable contribution to the development of the interpretation of the human right to a healthy environment while, at the same time, mainstreaming
a discourse on just sustainabilities and vis-a-vis Sámi communities. Hence, Sámi territorial rights are not only about recognition but, equally important, effective protection in relation to opposing land and water uses. As Heinämaa puts it, the Sámi traditional way of life is seriously threatened by multiple forms of competing land uses, such as forestry and mining, and, on top of that, the effects of climate change. Several of the authors of the chapters in this book refer to increased land use conflicts.

Because of insufficient protection and haste due to the sustainability transition, Sámi communities across Scandinavia are fighting hard to preserve their rights and cultures in multiple arenas and on multiple platforms; there are increasing conflicts with the state, with industry proponents and, quite often also, with local politicians and inhabitants who support new industries providing work opportunities and state tax revenues.

3.2 Sámi (ecological) knowledge

To understand why Sámi communities often oppose planned industry projects, one must take into account Sámi holistic worldviews that have been passed down for generations. Åmot and Bjerkland, in their chapter on early Sámi childhood education and sustainability practices, are thereby touching upon the fundamental questions of Sámi (ecological) knowledge and how it is transmitted to younger generations (intergenerational exchange). According to their study, the protection of nature and environmental sustainability appear to be the central themes in the teachers’ everyday pedagogy. One essential value that was emphasised, they observed, was respect for all life on earth and not overusing natural resources. In particular, Åmot and Bjerkland saw that Sámi narratives and myths were being used to teach Sámi children and with a clear focus on the interconnectedness between humans and nature. Moreover, they observed there was a focus on ‘learning by doing’ and using real tools and natural materials and, within that, with a clear goal of autonomy and the ability to support oneself if needed.

This intergenerational exchange, the transmission of traditional knowledge—including knowledge related to the environment and use of resources—is essential for cultural survival. Scheinin has, in relation to the Juvdujuujahä case, which was decided by the Finnish District Court in 2022, highlighted that the court determined that fishing restrictions in fact prevented the tradition of Sámi fishing that was to be passed on to future generations—namely, for the children themselves that had joined the fishing trip. In other words, the Finnish District Court affirmed the intergenerational nature of Indigenous peoples’ rights as represented in the practice of traditional or otherwise typical Indigenous practices, as well as the importance, therein, to next generations. The two Finnish Supreme Court rulings discussed by Scheinin had, in fact, missed this important aspect.

There are more general aspects of the use of Sámi ecological knowledge equally important, such as the inclusion of other knowledge systems but the
Western-oriented. With respect to the application of the Akwé: Kon Guidelines in Finland, Reimerson and Flodén comment that the process, itself, seems to have promoted the use of Sámi traditional knowledge in dealings and cooperations with state agencies. Apart from new practices in Finland, the Norwegian Fosen case emphasises the importance of Sámi traditional knowledge; Cambou discusses this aspect of the decision in her chapter.

In Fosen, the Norwegian Supreme Court heavily relied on one expert witness, Anna Skarin, and the research presented, which encompassed both Western science and traditional Sámi knowledge. These inputs highlighted the significant adverse effects of wind farms on reindeer and the studies included the results of ‘co-production of knowledge’ involving Sámi reindeer herders. Therefore, Cambou concludes that another important aspect of the Fosen case is that it raises the question of Indigenous knowledge for assessing negative impacts of development projects; it offers an avenue to challenge the dominance of Western science causing injustices that Sámi usually face in litigations, constraining Sámi claims in impact assessment processes and in courtrooms.

4. Sámi invisibility within the larger society

This section draws attention to Sámi invisibility in society at large, meaning statistical invisibility and the focus is placed on the lack of comprehensive statistical data related to Sámi as an ethnic group. In fact, statistics are more than just numbers. Governments are informed by statistics to implement policies and use such data in decisions regarding the allocation of resources. Statistics are used by civil society organisations to advance their position in policy and legislative processes. The lack of statistical data in the Scandinavian states has wide-ranging consequences related to the Sámi. Nonetheless, gathering statistical data is still a controversial issue among Sámi.

Within Scandinavia, neither Norway, Sweden nor Finland collect data on ethnicity in official statistics, meaning that there are serious deficits in statistics related to Sámi as an Indigenous people as well as significant gaps in knowledge in all three states. As Krawchenko and McDonald discuss in their chapter, concerning Sweden but nevertheless relevant for all three states, the lack of comprehensive and comparable longitudinal data means that it is precarious knowing whether Sámi rights, in general, are being realised and respected within the state. Indeed, without such data, it is very difficult to understand, for instance, how many individuals self-identify as Sámi in the state or the extent of Sámi entrepreneurship, which, in turn, makes it almost impossible to assess potential inequalities. In his chapter relating to Norway, Dawson attests to similar experiences. Under such conditions, the actual legal and economic situations of the Sámi are, to a great degree, invisible within the larger society.

As indicated, the lack of comprehensive disaggregated or Sámi-related data has far-reaching consequences, not least in the prevention of assessments of implementations of Sámi-related policies. Such an absence of data surely has widespread repercussions on Sámi culture, identity, and progress in society. Without reliable ethnicity-related statistics, it becomes almost impossible to direct policies towards
the Sámi community or know the effects as such because there is no understanding of the conditions of their daily life, well-being or changes over time. Both chapters in this book that are devoted to ethnic data (Dawson and Krawchenko & McDonald) argue that having proper statistics is a crucial element to an overall approach in advancing the rights of the Sámi.89

Data governance is closely linked to Sámi rights in the sense that the two co-determine how Sámi are officially perceived and how their rights are recognised in law. Under Swedish law, Krawchenko and McDonald explain, the Sámi are recognised as a national minority, as an Indigenous people and, as well, under general laws applicable to all Swedes (the latter applies especially those Sámi who are not members of a Sámi reindeer herding community).90 An additional consequence, then, may be that, in some respects, where extensive data does exist regarding a segment of the Sámi population (such as the reindeer herding Sámi in Sweden), such data, in turn, creates biases when not considering other Sámi groups within the Sámi society. Greater visibility for Sámi reindeer herding, argue Krawchenko and McDonald, can lead to the assumption that those who practice reindeer herding are ‘true’ and ‘authentic’ in comparison to other Sámi groups.91 Such disproportionate visibility amongst different groups within the Sámi society can therefore produce problems.

Evident from the chapters by Dawson and by Krawchenko and McDonald, the importance of Indigenous data has been discussed internationally for some time, such as in the United Nations Permanent Forum on Indigenous Issues.92 Today, statistics on Indigenous peoples are seen as an important tool for ensuring that states monitor and meet their human rights obligations, including most recently in relation to the UN Sustainable Development Goals (SDGs). In one guide published by the UN Office of the High Commissioner for Human Rights (OHCHR), it is stated that, in relation to the 2030 Agenda, states have collectively stressed the need for more systematic data disaggregation to help achieve and measure the SDGs.93 Within this context, each state should support the protection, respect and fulfilment of human rights.

The OHCHR guide provides ‘general guidance and elements of a common understanding’ on a so-called human-rights-based approach to data (HRBAD).94 Such an approach brings data stakeholders together to develop communities of practice that improve the quality, relevance and use of data and statistics consistently, all in accordance with international human rights norms and principles.95 The roles of Indigenous peoples in these processes are important, such as in the data collection process as a means to improve data quality; the OHCHR guide stresses the need for involvement of Indigenous communities in the processes, in particular because such inclusion, in turn, might support capacity-building and helps to ensure the relevance and accuracy of the data collection.96

The importance of claiming sovereignty over Indigenous data as a means of reclaiming control over Indigenous knowledge and ways of knowing is important today is evident from the chapters by Dawson and by Krawchenko and McDonald and has been discussed in literature. These shifts are essential to challenging the ways in which Indigenous peoples have historically been excluded from decision-making processes related to their own lives and communities. Therefore, Indigenous communities must assert their sovereignty over data and other forms of
knowledge production in order to promote Indigenous self-determination. This understanding is, today, known as Indigenous data sovereignty. The concept ‘Indigenous data sovereignty’ is becoming increasingly important as Indigenous communities seek to reclaim their autonomy and self-determination in the digital age. In short, Indigenous data sovereignty is crucial for Indigenous communities to exercise their right to self-determination, protect their cultural heritage and challenge the ongoing legacy of colonialism and discrimination.

Indigenous data sovereignty is of course relevant also for the Sámi people. Concerning data collection and governance, Dawson, Krawchenko and McDonald emphasise the need for Norway and Sweden to establish genuine and equal partnerships with Sámi institutions, in particular the Sámi Parliament, and that the concept of data sovereignty should apply to any discussions regarding how data should be utilised to advance Sámi rights. Although the section focuses on Sweden and Norway, similar challenges exist in Finland.

Given the importance of such tools, why do comprehensive Sámi-related statistics not exist? One answer to this deficit is scepticism from the Sámi society in gathering such data. Anchored in historical events, there is an ongoing distrust on the Sámi side regarding the states’ intentions. For example, the Swedish state censuses historically have defined Sámi as an ‘unproductive’ group, alongside prisoners, and, later on, restrictively defined ‘authentic’ Sámi as only those who participate in reindeer herding—which was a racist and discriminatory manner in which to manipulate data. Unfortunately, the same history applies to Norway. During the last part of the 1800s and the former half of the 1900s, the Norwegian state population statistics produced were invasive and discriminatory and based on pseudoscientific theories of racial superiority; the 1970 census was, in fact, the last of its kind to collect any Sámi-specific data in Norway. The three Scandinavian countries no longer conduct traditional state censuses but compile, instead, official population statistics by linking data from extensive administrative registers which are, in turn, supplemented by smaller population surveys where necessary. This data collection process is not helpful for creating comprehensive Sámi statistics, as such statistics would be found largely outside the administrative systems. Instead, existing Sámi data is often restricted to small geographic areas or cannot be disaggregated by Sámi ethnicity. As a result, even the sizes of the Sámi populations in these states are unknown.

To summarise, statistics are power and can be used as means to an end, to back Sámi claims; therefore, statistics are more than just numbers. Statistics are used by governments to inform policies and the allocation of resources, and statistics are used by civil society organisations to advance their interests in political and policy debates. Therefore, there are wide-ranging consequences related to the lack of statistical data regarding the Sámi, not only in Norway and Sweden, which are the focuses of the two related chapters in this book, but also in Finland. If ethnicity-related data is not collected, Krawchenko and McDonald ask, how can a state know that rights are being met or understand changes in conditions over time? Lastly, this also means that there exist no comparable statistics across these three states in Sápmi.
5. Brief conclusion and discussion

The individual chapters of this book cover a wide range of topics; this concluding chapter brings some of the topics addressed within those chapters to the forefront, themes that have united across the texts. This chapter has displayed both progress and challenges faced in respect to the recognition and protection of Sámi territorial rights within the three Scandinavian states, and it is evident that all three states have problems, as such, but in different ways and depending on the legal contexts of each state.

A general insight from state-specific reports by chapter authors of this book is that domestic courts, today, seem more willing than before to address constitutional and international human rights law in resolving the cases before them, and it is likely that this development will continue and even increase. This trend seems to apply, also, to the Finnmark Commission and its appellate body, the Land Tribunal for Finnmark, at least concerning the recent Karasjok case, whereby collective ownership had been acquired by immemorial usage (alders tids bruk in Norwegian). That state courts interpret and apply international law regarding Indigenous rights is today becoming more common and should not be understood as an act of politics or overstepping the courts’ authority (see section 2.2).

A rather new theme in the Scandinavian Sámi rights discourse is the matter of reliable and comprehensive Sámi statistics. The lack of such data has noticeable consequences. For example, it is difficult to assess the effects of new or established Sámi-related policy or whether Sámi rights are recognised and respected within a country. This is a remarkable deficit. Measures should also be put in place for Sámi data sovereignty, especially as means to exercise their right to self-determination, protect their cultural heritage and challenge the ongoing legacies of colonialism and discrimination in the Scandinavian states. This is also important as Indigenous communities around the world seek to reclaim their autonomy and self-determination in the digital age.

Something that is particularly worrying is the haste in which the new industrialisation and sustainability transitions are taking place in the Scandinavian North, whereby Sweden has a clear ambition to be the leading state in such changes from a European (and global) perspective. The protection of Sámi territorial rights is not established firmly yet, and with multiple land use pressures, the landscape will become even more fragmented. Reindeer herders are being forced to accept new industries and infrastructures on their grazing areas, in turn needing to adapt and change grazing patterns as well as provide their reindeer with supplementary food (especially during winter). Here, the Norwegian Supreme Court’s interpretation of Article 27 of the ICCPR in the Fosen case can be helpful for moving away from currently standard mitigation measures, such as compensatory winter feeding for reindeer, towards the direction of supporting ‘traditional’, nature-based measures, such as the reindeer’s winter grazing. With an increased fragmentation of grazing areas, flexibility with respect to alternative areas for grazing is, however, diminishing; available grazing areas have, over the past decades, substantially decreased year by year. This change is a serious and real threat to the future of the Sámi
reindeer herding culture, Sámi languages and Sámi traditional knowledge and ways of life. To properly assess cumulative pressures, which Heinämäki emphasises in her chapter, it is necessary to make cumulative impact assessments in relation to all permitting processes, to then monitor whether the threshold of Article 27 (ICCPR) is met in an area, denying Sámi in their community the right to enjoy their culture. Because of the seriousness of these issues, we can expect an increase of land use conflicts within Sámi traditional territories and in appeals made regarding permit decisions. The role of the state courts becomes paramount, then, in the respecting and protection of Sámi territorial rights and their rights to enjoy their culture, as well as in the providing of a fair and just balance between the differing rights and interests, environmental protection and climate change needs. This is within the scope of the courts’ role. However, the states also need to follow and implement the Supreme Court decisions protecting Sámi territorial rights and culture, something that has proven to be difficult for the Norwegian government concerning the two wind farms in the *Fosen* case that have yet to be dismantled despite the court’s decision. The aftermath of the Swedish *Girjas* case has, so far, led to the establishment of a Public Law Commission in Sweden to, for instance, analyse if Sámi reindeer herding communities other than Girjas, within the Swedish North, have acquired the same rights as Girjas to lease their rights to small-game hunting and fishing to other persons. So far, the existence of the necessary political will to change the relevant legislation is dubious, and most likely a lack of political will result in a series of new lawsuits against the Swedish state on the matter.

Finally, to come full circle to where we started: Land is essential to Indigenous peoples, and so it is to Sámi communities. The protection of their territories and rights is of the utmost importance; any threat to Sámi lands is a threat to their way of life, including their distinctiveness as an Indigenous people, which is put forward by Åhrén in his chapter. Even if a sustainability transition to combat climate changes indeed is necessary, there is an evident risk that new industries in the Scandinavian North easily trump in a balancing of interests vis-à-vis the protection of Sámi territorial rights and culture—industries benefit from a larger public support both in terms of a ‘greening’ industrialisation and increased employment in rural areas. Should we really accept such unjust violations for ‘the greater good’?

**Notes**

2. ibid arts 25–26, 32.
3. ibid art 8.
5. See, e.g., ibid arts 14–15.
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8 UN Human Rights Committee, ‘CCPR General Comment No 23: Article 27’ (8 April 1994) UN Doc CCPR/C/21/Rev.1/Add.5, para 7.
9 Marianne Stoessel, Jon Moen and Regina Lindborg, ‘Mapping Cumulative Pressures on the Grazing Lands of Northern Fennoscandia’ (2022) 12(16044) Scientific Reports. The study considers changes over the last 60 years of grazing lands for reindeer and sheep; effects caused by hydroelectric dams or power lines are not included.
10 ibid.
11 ibid. For more information, see e.g., Åsa Larsson Blind, ‘Pathways for Action: The Need for Sámi Self-Determination’ in Tim Horstkotte and others (eds), Reindeer Husbandry and Global Environmental Change—Pastoralism in Fennoscandia (Routledge 2022).
13 Stoessel, Moen and Lindborg (n 9).
15 See particularly the SDGs 12–17 that are important for Indigenous peoples.
17 This assessment system exists due to Norway’s obligations regarding the land rights provisions in ILO Convention No. 169. The Finnmark Commission is tasked to investigate the existence of Sámi land rights in Finnmark County and was established via the Finnmark Act 2005.
18 Øyvind Ravna, ‘The survey of property rights in Sámi areas of Norway—with focus on the Karasjok case’ in Dorothée Cambou and Øyvind Ravna (eds), The Significance of Sámi Rights: Law, Justice, and Sustainability for the Indigenous Sámi in the Nordic Countries (Routledge 2023).
19 ibid.
20 The Land Tribunal of Finnmark, UTMA-2021–086077 and UTMA-2021–086497, decided on 21 April 2023.
21 Supreme Court of Norway, HR-2021–1975-S (Fosen).
22 Dorothée Cambou, ‘The significance of the Fosen decision for protecting the cultural rights of the Sámi Indigenous people in the green transition’ in Cambou and Ravna (n 18).
23 ibid.
24 Although there is also no room for a proportionality assessment, it may, according to the Supreme Court, be necessary to strike a balance if Article 27 conflicts with other basic rights, such as the right to a good and healthy environment.
25 Cambou (n 22).
26 ibid.
27 ibid.
29 Eivind Torp, ‘The interplay of politics and jurisprudence in the Girjas case’ in Cambou and Ravna (n 18).
30 ibid.
31 ibid.
32 Leena Heinämäki, ‘The prohibition to weaken the Sámi culture in international law and Finnish environmental legislation’ in Cambou and Ravna (n 18); Martin Scheinin, ‘Indigenous peoples’ right to fish: recent recognition of Sámi rights in Finland through civil disobedience and criminal trial’, in Cambou and Ravna (n 18).
33 Henämäki (n 32).
34 ibid.
35 ibid.
36 ibid.
37 ibid.
38 Scheinin (n 32).
39 ibid.
40 ibid.
41 ibid.
42 ibid.
43 ibid.
44 ibid.
45 ibid.
46 ibid.
47 The case concerned winter pasture rights, on private lands, for three reindeer herding communities.
48 Mattias Åhrén, ‘The relevance of the UN Declaration on the Rights of Indigenous Peoples to vibrant, viable and sustainable Sámi communities’ in Cambou and Ravna (n 18).
49 The case concerned the lawfulness of a large wind farm. See Fosen (n 21).
50 Åhrén (n 48).
51 ibid.
52 ibid.
53 Elsa Reimerson and Linn Flodén, ‘Navigating conservation currents: conditions for Sámi agency in collaborative governance and management models’ in Cambou and Ravna (n 18).
54 ibid.
55 These are voluntary guidelines on how to assess cultural, environmental and social impacts, regarding development projects likely affecting Indigenous traditional territories, including sacred sites.
57 Torp (n 29).
58 Allard and Brännström (n 28).
59 Torp (n 29).
60 See also Christina Allard, ‘Some Characteristic Features of Scandinavian Laws and Their Influence on Sami Matters’ in Christina Allard and Susann Funderud Skogvang (eds), Indigenous Rights in Scandinavia—Autonomous Sami Law (Ashgate 2015) 51.
61 Torp (n 29)
63 Malin Brännström, ‘The implementation of Sámi land rights in the Swedish Forestry Act’ in Cambou and Ravna (n 18).
64 Scheinin (n 32).
65 Christina Allard, Renskötselrätt i nordisk belysning (Makadam 2015) 311–15 with references; Allard (n 60) 52–55.
66 See the individual articles in the special issue (‘Högsta domstolen—50 år som prejudikatinstans’) in Volume 5–6 2022 of Svensk Juristtidning (SvJT), as well as individual articles in the special issue (‘Svensk Juristtidning 100 år’) 2016. See also e.g., Fredrik
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67 Cambou (n 22); Ravna (n 18).
68 Ravna (n 18); Scheinin (n 32); Brännström (n 63); Reimerson and Flóden (n 53).
69 Brännström (n 63); Heinämäki (n 32).
70 Brännström (n 63).
71 Heinämäki (n 32).
73 Cambou (n 22).
74 ibid.
75 Heinämäki (n 32).
76 Ingvild Åmot and Monica Bjerklund, ‘Sámi rights and sustainability in early childhood education and care: sustainability in everyday practices in Norwegian kindergar-
tens’ in Cambou and Ravna (n 18).
77 ibid.
78 ibid.
79 ibid.
80 ibid.
81 Scheinin (n 32).
82 Reimerson and Flodén (n 53).
83 Cambou (n 22).
84 ibid.
85 Tamara Krawchenko and Chris McDonald, ‘Rendering the invisible visible: Sámi rights and data governance’ in Cambou and Ravna (n 18).
86 ibid.
88 Data disaggregation means breaking down large data categories into more specific subcategories. When data are broken down, such as by ethnic groups, they can show the unique differences among groups and reveal significant disparities.
89 Dawson (n 87); Krawchenko and McDonald (n 85).
90 Krawchenko and McDonald (n 85).
91 ibid.
92 Dawson (n 87); Krawchenko and McDonald (n 85).
93 UN Office of the High Commissioner for Human Rights (OHCHR), ‘A Human Rights Based Approach to Data’ (2018) 2. Data is here used as ‘a generic term, including but not limited to statistics. It is seen as encompassing a wide range of quantitative or qualitative standardized information compiled by national statistical offices as well as other governmental or non-governmental entities, whether at local, national, regional or global level’. See ibid fn 1.
94 ibid.
95 ibid.
96 ibid, fn 8.
98 Dawson (n 87); Krawchenko and McDonald (n 85).
99 ibid.
100 ibid.
101 ibid.
102 Krawchenko and McDonald (n 85).

The Talma reindeer herding community has already on 18 May 2020 handed in a lawsuit against the Swedish state claiming their exclusive hunting and fishing rights.